IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.951 OF 2006

Sunbeam Monochem Private Limited & ors. Petitioners
vs.
Union of India & ors. Respondents

Mr.D.B.Shroff, Senior Advocate with Mr.S.V.Mehta i/b.M/s.Malvi Ranchhoddas & Co. for the petitioners.

Mr.S.M.Shah with Mr.A.S.Rao i/b.Dr.T.C.Kaushik for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 4th April, 2006

P.C.

We heard Mr.D.B.Shroff, the learned senior counsel for the petitioners and Mr.S.M.Shah, counsel for the respondents.

2. Rule. Returnable forthwith.

3. Writ petition is heard finally at this stage.

4. The petitioners suffered a fiscal penalty of Rs.one crore for non-fulfillment of export obligation against the advance licence vide order in original dated 25th October, 2004 passed by the Joint Director General of Foreign Trade, Mumbai.

5. The petitioners preferred appeal before the

Additional Director General of Foreign Trade. The appellate authority waived the pre-deposit substantially and directed the petitioners to deposit a sum of Rs.5,00,000/- (Rupees five lacs) towards pre-deposit for maintaining the appeal within eight weeks from the order dated 11th November, 2005. The said order dated 11th November, 2005 is said to have been received by the petitioners on 19th November, 2005.

6. As, within eight weeks from the order dated 11th November, 2005, the petitioners failed to deposit the amount of Rs.5,00,000/- (Rupees five lacs) towards pre-deposit, the Appellate Authority vide order dated January 1, 2006 rejected the appeal due to non-submission of pre-deposit penalty. It is against this order that the present writ petition has been filed.

7. We are informed by the learned senior counsel for the petitioners that now the amount of Rs.5,00,000/- (Rupees five lacs) has already been deposited towards pre-deposit. He submits that mercy be shown to the petitioners and the appeal be ordered to be restored to the file of Additional Director General of Foreign Trade.

8. We asked the senior counsel for the petitioners as to whether the petitioners are willing to deposit a

further sum of Rs.5,00,000/- (Rupees five lacs) towards penalty. The response of the senior counsel was positive. The fact that the petitioners have already deposited a sum of Rs.5,00,000/- (Rupees five lacs), though belatedly and that they are willing to deposit a further sum of Rs.5,00,000/- (Rupees five lacs) within the time as may be directed by this Court, we are of the view that interest of justice shall be subserved if the appeal is restored to file and heard on merits by the Additional Director General of Foreign Trade.

9. The result is that we dispose of the rule by the following order:

(i) The petitioners shall deposit a further sum of Rs.5,00,000/- (Rupees five lacs) with the Joint Director General of Foreign Trade, Mumbai within two weeks from today. This deposit is in addition to a pre-deposit of Rs.5,00,000/- (Rupees five lacs) that is already said to have been made by the petitioners on 10th March, 2006.

(ii) Upon compliance of the aforesaid direction, the appeal filed by the petitioners before the Additional Director General of Foreign Trade

(Appeals) New Delhi against the order in original dated 25th December, 2004 shall stand restored and the order dated 5th January, 2006 shall stand set aside. Upon restoration of the appeal before the Additional Director General of Foreign Trade (Appeals) against the order in original dated 25th December, 2004, the Appellate Authority shall hear and decide the appeal on merits.

(iii) On the other hand, in case of default by the petitioners in not depositing a further sum of Rs.5,00,000/- (Rupees five lacs) within two weeks from today, the order passed by the Additional Director General of Foreign Trade on 5th January, 2006 shall stand as it is.

No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)